GAHC010202212026

2026:GAU-AS:16626

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2765/2026

SALMA KHATUN AND ANR
D/O TAJUDDIN ANSARI, R/O BICH LANE, BINAGURI TEA GARDEN D AND TELI PARA BASTI, P.S. BARAIGHAT, DISTRICTJALPAIGURI, WEST BENGAL.

2: GITA BIBI
W/O TAJUDDIN ANSARI
R/O BICH LANE
BINAGURI TEA GARDEN D AND TELI PARA BASTI
P.S. BARAIGHAT
DISTRICTJALPAIGURI
WEST BENGAL

VERSUS

UNION OF INDIA
TO BE REPRESENTED BY THE NARCOTICS CONTROL BUREAU,
GUWAHATI ZONAL UNIT, GUWAHATI

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,MISS. P M AHMED,MR. M A CHOUDHURY

Advocate for the Respondent : SC, NCB,

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

11/11/2026

Heard Mr. A. Ahmed, learned counsel for the petitioners and Mr. R. K. D. Choudhury, learned Senior Counsel and Standing Counsel, NCB assisted by Ms. L Devi, learned counsel for the respondent.

2. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been instituted by the accused/petitioners, namely, **(1) Salma Khatun** and **(2) Gita Bibi**, praying for grant of regular bail in connection with NDPS Case No. 356/2025, arising out of NCB Guwahati Crime No. 06/2025, registered under Section 8(c) of the NDPS Act read with Sections 22(c)/29 of the NDPS Act.

3. As revealed from the complaint filed in the matter by the NCB under Section 36A of the NDPS Act, 1985, on 24.04.2025 at around 20:30 hours, Sri Manoj Sauguna, Inspector/Intelligence Officer, Narcotics Control Bureau, Zonal Unit, Guwahati, received an information from a reliable source that two women, namely, Salma Khatun and Gita Bibi (petitioners, herein) were trafficking a huge quantity of Methamphetamine tablets in Aronai Express, SCL-TVC Express, Train No. 12508, which was expected to reach Guwahati Railway Station, Guwahati on 25.04.2025 at around 05:55 AM. Information was also received that the petitioners were occupying seat Nos. 53 and 54 of coach No. S5 of the said train.

On receipt of the said information, the officer submitted the information in

writing in the form of NCB-1 to the Superintendent, NCB Guwahati at about 20:45 hours. The Superintendent, NCB Guwahati, on the basis of the written information received issued an order dated 24.04.2025, constituting a team for taking necessary legal action and the said Manoj Sauguna was authorized as the Seizing Officer. Another order was passed on the same day, i.e., on 24.04.2025, by the Superintendent, NCB Guwahati Zonal Unit, authorizing Shri Rohit Jaiman, Sub-Inspector, NCB, Guwahati Zonal Unit, Guwahati as the Investigating Officer in case any psychotropic substance was sized and a new case was registered as NCB Guwahati Crime No. 6/2025.

In terms of the directions passed vide the order dated 24.04.2025, the said Manoj Sauguna (authorized as Seizing Officer), along with other members of the team arrived at Guwahati Railway Station on 25.04.2025 at around 6:10 hours. The said team approached members of the general public and requested them to be present with the NCB Team as independent witnesses during search, recovery and seizure of Methamphetamine tablets, which were suspected to be trafficked by the petitioners in Train No. 12508. However, none of the persons approached, consented to be witnesses. Accordingly, the team approached the RPF post and requested two RPF officials to assist the NCB team as independent witnesses, to which both of them voluntarily agreed.

The NCB team along with the two independent witnesses, thereafter, proceeded to Platform No. 2, where, Train No. 12508 was to arrive. The train arrived at around 6:45 hours and the team, thereafter entered Coach No. S5 and approached the passengers occupying seat nos. 53 and 54. The team thereafter found the petitioners to be occupying their said seats. The petitioner No. 2 introduced herself to be the mother of the petitioner No. 1. Thereafter,

the luggage and parcels carried by the petitioners were examined and two plastic packets were found therein.

It is projected that the petitioners stated that the said plastic packets contained Yaba tablets (Methamphetamine tablets). As the said train was to stop at Guwahati Railway Station only for around 15 minutes, the Seizing Officer requested the petitioners to come down from the train for further search of the said two plastic packets, to which the petitioners voluntarily agreed and they were thereafter taken to the RPF post for search and seizure work.

It is projected that on a search being made, around 2 kg. of Methamphetamine tablets were recovered from the petitioners. After securing the materials, the same were seized and packed by following the prescribed procedure. The seizure proceeding are stated to have been completed on 25.04.2025 at around 10:00 hours. Thereafter, it is projected that the petitioners were issued with notices under Section 67 of the NDPS Act, 1985 and directed to appear before the Investigating Officer of NCB, Guwahati, for further investigation. The petitioners accordingly appeared and their statements were recorded under Section 67(c) of the NDPS Act.

The petitioner No. 2 was contended to have been arrested on 25.04.2025 at around 16:00 hours. On such arrest being made, notice under Section 47 BNSS was given to the petitioner No. 2 and on the same date, an intimation of arrest was given to the husband of the petitioner No. 2 at the address as disclosed by the petitioners, herein. Petitioner No. 1 was arrested at around 16:30 hours of 25.04.2025 and, accordingly, she was also given a notice under Section 47 BNSS and the intimation of her arrest was given to her father, i.e., the husband of the petitioner No. 2.

The petitioners were, thereafter, medically examined and were produced before the Court of the learned Special Judicial Magistrate, Kamrup (Metro), Guwahati on 26.04.2025. The petitioners moved a bail application before this Court, which was registered as Bail Appln. No. 3308/2025. In the meanwhile, the final complaint having been submitted by the NCB officials against the petitioners on 17.10.2025, this Court, vide order dated 24.10.2025, dismissed the said bail application, with a liberty to the petitioners to approach the Trial Court for regular bail.

Charges were framed against the petitioners on 19.12.2025 under Sections 22(c)/29 of the NDPS Act. On the same on being read over and explained to them, the petitioners having pleaded not guilty and claimed to be tried, the learned Trial Court fixed the matter on 22.01.2026 for evidence. The petitioners, thereafter, moved an application for being enlarged on bail. However, the learned Trial Court vide order dated 24.08.2026 rejected the prayer made by the petitioners for being enlarged on regular bail. Accordingly, the petitioners have instituted the present bail application.

4. Mr. A Ahmed, learned counsel for the petitioners, after reiterating the facts noticed, hereinabove, has submitted that after the arrest of the petitioners, herein, the grounds of arrest were not communicated to the relatives of the petitioners in terms of the provisions of Section 48 of the BNSS, 2023. Accordingly, it is submitted that the arrest of the petitioners stood vitiated and they were required to be enlarged on bail.

4.1 In this connection, the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of ***Vihaan Kumar Vs. State of Haryana*** reported in ***2025 INSC 162***.

4.2 The learned counsel for the petitioners has further submitted that although the petitioners were detained at around 07:00 hours on 25.04.2025**,** when the search and seizure proceedings had been initiated, they were not produced before the learned Court within 24 hours thereof, and were so produced only after completion of 24 hours with effect from their such detention. It is submitted that even if the period of transit from the place, where, the petitioners were being so detained to the Court is taken into consideration, it is an admitted position that the petitioners were so produced before the learned Court after completion of 24 hours from the time of their detention on 25.04.2025. Accordingly, the learned counsel for the petitioners submits that the fundamental rights as available of the petitioners under Article 22(2) of the Constitution of India stood violated, rendering their arrest illegal and vitiated and, accordingly, entitling the petitioners to be enlarged on bail.

4.3 The learned counsel for the petitioners, in support of his submissions, has placed reliance on the recent decision of the Hon'ble Supreme Court in the case of ***Jaskaran Jeet Singh Deol Vs. State of Punjab***, reported in ***2026 SCC OnLine SC 1939***.

4.4 The learned counsel for the petitioners has further submitted that although the charge was framed against the petitioners by the learned Trial Court on 19.12.2025, no witness has been examined in the matter till date.

4.5 By referring to the orders available in the scanned copy of the Trial Court records, it is submitted by the learned counsel for the petitioners that on almost all the dates fixed for adducing evidence by the prosecution, adjournments were granted on account of non-appearance of the witnesses. It is projected that the case is now fixed on 10.12.2026 for evidence and it is not known as to whether

the witnesses would also appear on the said date.

5. Per contra, Mr. R. K. D. Choudhury, learned Senior Counsel and Standing Counsel, NCB submits that the plea now taken by the petitioners with regard to violation of the provisions of Article 22 of the Constitution of India was never taken by the petitioners, either in the earlier bail application filed by them or before the learned Trial Court.

5.1 By referring to the order dated 26.04.2025 passed by the learned Special Judicial Magistrate First Class, Kamrup (Metro), on the production of the petitioners before it after their arrest, he submits that the Court on an examination of the matter, had found that the requirements of Section 36(b) and Section 48(2) of the BNSS, 2023 were complied with. He submits that accordingly, the plea taken by the petitioners of violation of the provisions of Article 22(2) of the Constitution of India would not mandate a consideration by this Court at this stage.

5.2 With regard to the plea taken by the petitioners of non-furnishing of the grounds of arrest to their close relative, Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB, submits that notices were sent to the husband of the petitioner No. 2 and the father of the petitioner No. 1, at the address, which were given by the petitioners. However, the said communication could not be served upon the said relative, inasmuch as he was found not to be residing therein.

5.3 Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB has further submitted that the intimation about the arrest of the petitioners was also given to their relative over phone.

5.4 Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB submits that an attempt was also made to serve a copy of the grounds of arrest upon the disclosed relative of the petitioners by physically serving the same upon him, however, on such approach being made, the said relative was not found to be residing at the address given by the petitioners and the team was also informed by the jurisdictional Panchayat member that the relative so disclosed was not residing therein and his whereabouts were not known. Accordingly, he submits that the alleged violation of the provisions of Section 48 of BNSS, as raised by the petitioners in the present proceedings, would not mandate an acceptance by this Court, inasmuch as, it was impossible to serve the relative, so named by the petitioners after their arrest, as he was found to be not residing at the disclosed address.

5.5 Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB, with regard to the plea taken by the petitioners that the petitioners were not produced before the Court within 24 hours from the twin date of their detention, has submitted that the period of 24 hours is to be so construed from the time the petitioners were actually placed under arrest. He submits that the records would reveal that the petitioner No. 2 was arrested at about 16:00 hours on 25.04.2025, while the petitioner No. 1 was so arrested at about 16:30 hours of 25.04.2025, and they were produced before the competent Court on 26.04.2025 within 24 hours of such arrest.

5.6 Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB disputes that the period of 24 hours is to be reckoned from the time the search and seizure operation had started, which is projected to have been so commenced w.e.f. 07.10 hours on 25.04.2025. Accordingly, he submits that on

the said count also, the prayer of the petitioners for being enlarged on bail, would not mandate an acceptance by this Court.

5.7 Mr. Choudhury, thereafter, has submitted that the non-examination of witnesses cannot be projected to be on account of any default on the part of the prosecution. He submits that the learned Trial Court had considered the said issue and had concluded that there was nothing on record to indicate that non-examination of the witnesses was because of any lapse on the part of the prosecution.

5.8 Having made the said submission, Mr. Choudhury, learned Senior Counsel and Standing Counsel, NCB, by referring to the provisions of Section 37 of the NDPS Act submits that satisfaction has to be drawn by this Court with regard to the twin conditions as laid down under Section 37 of the NDPS Act. He submits that the recovery made from the petitioners being of commercial quantity, this Court would be slow in enlarging the petitioners at this stage without recording satisfaction as required under the provisions of Section 37 of the NDPS Act.

6. I have heard the learned counsel for the parties and also perused the materials available on record. This Court has also perused the scanned coy of the Trial Court records.

7. The plea taken by the petitioners with regard to violation of the provisions of Section 48 of the BNSS, has been examined by this Court.

8. From the materials available on record, this Court finds that the prosecution had taken steps for issuance of notices to the relative disclosed by the petitioners, at the address furnished by them. However, it is found that the notices could not be served and even the subsequent steps taken for physical

service of the said notice did not succeed, inasmuch as it was found that the said relative was not residing in the said area.

9. The said aspect of the matter is also found to have been examined by the competent Court, while the petitioners were produced before it and the competent Court had drawn satisfaction to the effect that the provisions of Section 36 and Section 48 of the BNSS, 2023, were complied with by the prosecution.

10. Considering the steps taken by the prosecution in the matter, including issuance of communication to the relative at the address disclosed by the petitioners, this Court finds that the petitioners cannot take advantage of the inaccuracy of their own information. The law does not compel the performance of an impossible act. Accordingly, the said issue is answered against the petitioners, herein.

11. This Court would now examine the contention raised by the petitioners that they were not produced before the concerned Court within 24 hours of their detention. The petitioners have contended that from the time the search and seizure operation had started, i.e., around 7:10 hours, the petitioners were placed under detention by the NCB officials. Accordingly, it is projected that the period of 24 hours is now required to be deemed to have commenced from the time when the petitioners were placed under detention upon commencement of such search and seizure operation against them on 25.04.2025.

12. Clause (2) of the Article 22 of the Constitution of India mandates that every person, who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, including the

time necessary for the journey from the place of arrest to the Court of the Magistrate, and that no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Continued detention beyond 24 hours without the accused being produced before the Magistrate renders such detention illegal and infringes upon the fundamental rights of the accused as conferred under Clause (2) of Article 22 of the Constitution of India.

13. From the materials brought on record, this Court finds that the petitioners, herein, were detained at around 7:10 hours on 25.04.2025 and, on being placed under such detention, they were not free to leave and their liberty stood curtailed. The respondents have also not disputed that the search and seizure operation against the petitioners had started at around 7:10 hours and had continued till around 10:00 hours on 25.04.2025. The petitioners were produced before the competent Court only on 26.04.2025. The respondents have tried to counter the said allegation made by the petitioners by projecting that the period of 24 hours, during which period the detention of the accused by the Investigating Agency is permissible, commences only from the time the petitioners were actually placed under arrest. The said projection made by the petitioners would not mandate an acceptance from this Court. The petitioners being subjected to a search and seizure, it is not disputed that the search and seizure operation against them commenced at around 7:10 hours on 25.04.2025, and their physical custody, therefore, was taken over by the NCB officials at least from that time, if not earlier.

14. The materials brought on record also indicate the said fact. Further, the respondents have not brought on record any material to demonstrate that the petitioners, herein, were actually produced before the competent Court within

24 hours of their such detention, which had begun w.e.f. 7:10 hours on 25.04.2025.

15. The respondents have further projected that the said plea with regard to the violation of the provision of Clause (2) of Article 22 of the Constitution of India was not raised by the petitioners in the earlier bail applications filed before this Court or before the Trial Court. The said contention, in the considered view of this Court, would not mandate an acceptance, inasmuch as the fundamental rights guaranteed under Clauses (1) and (2) of the Article 22 of the Constitution of India, guard against unlawful deprivation of liberty and, if they are breached the custody itself loses its lawful basis. The plea raised by the petitioners of violation of the provisions of Article 22 of the Constitution of India goes to the root of the continued detention and the non-urging of such ground in the earlier proceedings cannot be construed to be a waiver of the constitutional guarantee.

16. This Court, at this stage, would refer to the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ***Directorate of Enforcement Vs. Subhash Sarma*** reported in ***2025 SCC OnLine SC 240,*** has held that an arrest gets vitiated on completion of 24 hours in custody without being produced before the nearest learned Magistrate. The Hon'ble Supreme Court further held that once a Court, while dealing with a bail application finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the Bail Application to release the accused on bail.

17. The Hon'ble Supreme Court in its recent decision in the case of ***Jaskaran Jeet Singh Deol*** (supra) by referring to its decision in the case of

Subhash Sarma (supra), had drawn the following conclusions:

"***31.*** *A two-Judge Bench of this Court in Subhash Sharma held that where detention continued beyond 24 hours without the accused being produced before the Magistrate, the arrest of the accused was rendered completely illegal as a result of violation of clause (2) of Article 22 of the Constitution of India. Continuation of the accused in custody without being produced before the nearest Magistrate within the stipulated time frame of 24 hours is completely Illegal and infringes the fundamental rights of the accused under clause (2) of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.*

31.1*. Once a court while dealing with a bail application finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution have been violated while arresting the accused or after arresting him, it is the duty of the court dealing with the bail application to release the accused. When arrest is illegal or vitiated, bail cannot be denied notwithstanding non-fulfilment of the twin tests under Section 45(1)(II) of the PMLA. It is because it is the duty of every court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.*

33. *Long back, in the celebrated case of Khatri, this Court had strongly urged that the constitutional requirement to produce an arrested person before a Judicial Magistrate within 24 hours of his arrest must be strictly and scrupulously observed. We have come a long way since then but this constitutional mandate continues to remain firm and unshaken, as if engraved in stone."*

18. Accordingly, this Court is of the considered view that the petitioners, herein, not having been produced before the competent Court within 24 hours of their such detention, the fundamental rights of the petitioners as conferred upon them under the provisions of Article 22 of the Constitution of India stood violated, rendering the detention of the petitioners illegal and entitling them to be granted the privilege of regular bail.

19. In view of the said conclusion reached by this Court of violation of the fundamental rights of the petitioners, herein, the further issue raised by the petitioners of their continued incarceration for around 1½ years and there being no examination of witnesses before the learned Trial Court since the framing of charge would not be required to be further examined. The fundamental rights of the petitioners having been held to have been violated in the matter, the plea taken by the respondents with regard to Section 37 of the NDPS Act, in the considered view of this Court, would not mandate a consideration. It is a settled position of law that the statutory restrictions on grant of bail under Section 37 of the NDPS Act cannot stand in the way of release of an accused whose fundamental rights under Article 22 of the Constitution of India have been violated. Accordingly, the said plea raised by the respondents stands rejected.

20. In view of the above discussion, the petitioners, herein, are found to be entitled to be enlarged on bail. Accordingly, this Court directs that the petitioners, namely, **(1) Salma Khatun** and **(2) Gita Bibi**, be enlarged on bail on furnishing a bail bond of Rs.1,00,000/- (Rupees One Lakh only) each, with 2 (two) suitable sureties each of the like amount, to the satisfaction of the learned Special Judge (NDPS), Kamrup (Metro), Guwahati, on the following conditions:

(1) The petitioners, herein, shall appear before the learned Trial

Court on each of the dates fixed for the trial of the case;

(2) The petitioners, herein, shall not leave the territorial jurisdiction of the learned Trial Court, without obtaining prior written permission from the said Court;

(3) The petitioners, herein, shall not hamper with the trial, or tamper with the evidence of the case;

(4) The petitioners, herein, shall not directly or indirectly make any inducement, threat or promise to any person(s), acquainted with the facts of the case so as to dissuade him/her from disclosing the same to the Court;

(5) The petitioners, herein, shall not involve themselves in any criminal activities in future.

21. In the event of violation of any of the conditions as stipulated hereinabove for the grant of bail to the petitioners, it is provided that it will be open to the NCB officials to approach the learned Trial Court for cancellation of the privilege of bail granted to the petitioners, herein.

22. Before parting with the records of the matter, it is observed that the conclusions reached hereinabove, are confined to the consideration of the prayer of the petitioners for being enlarged on bail and shall not be construed to be an expression of opinion on the merits of the case, nor shall the same influence the trial. It is also directed that the prosecution shall ensure the attendance of the witnesses on the dates so fixed by the Trial Court so as to ensure an expeditious conclusion of the trial.

23. With the above observations and directions, this bail application stands disposed of.

JUDGE

Comparing Assistant